

UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Case No.: 04-35435-BKC-SHF
Chapter 11

In re:

ECOM ECOM.COM, INC.,

Debtor.

MOTION OF U.S. TRUSTEE TO DISMISS CASE
OR CONVERT CASE TO A CASE UNDER CHAPTER 7

NOW COMES Felicia S. Turner, the United States Trustee for Region 21 (hereinafter the "U.S. Trustee"), by her attorney, Denyse Heffner, and hereby moves this Court, pursuant to 11 U.S.C. Section 1112(b), for an order dismissing this case, or in the alternative, converting this case to a case under chapter 7 of the Code. In support thereof, the U.S. Trustee states as follows:

This is a core proceeding concerning the administration of the estate pursuant to 28 U.S.C. §§1334(a) and (b), and 157(b)(2)(A) and (O), which this Court may hear and determine pursuant to Administrative Order 84-12-Civ.-Misc., dated July 11, 1984, of the United States District Court for the Southern District of Florida, codified in Southern District Local Rule 87.2.

1: This chapter 11 case was commenced on November 29, 2004 by the filing of an involuntary petition for relief against ECOM ECOM.COM, INC. (the "Debtor"). The Debtor finally answered and accepted relief in Chapter 11 on or about May 20, 2005 (C.P. #24), retained attorneys of the firm Kluger, Peretz, Kaplan & Berlin ("Kluger, Peretz") on or about June 6, 2005, and has remained in possession of estate assets but operates no business pursuant to Sections 1107 and 1108 as debtor in possession.

2. On June 6, 2005, Barney Richmond, Chairman of the petitioning creditor American

Capital Holdings, was employed as Chief Executive Officer, and petitioning creditor American Capital Holdings was allowed to loan approximately \$100,000 to the debtor-in-possession.

3. Debtor represented to this Court that it intended to restructure its securities and complete viable business plans for its spin-off companies.

4. Pursuant to Sec. 521(1) of the Code, the Debtor has filed schedules of assets and liabilities. The schedules as filed show

real property valued at	\$ NONE,
other assets valued at (receivable claims),	\$ 244,408
secured debt of	\$ NONE,
priority debt -wage or salary- of	\$ 4,650,
and unsecured debt of	\$1,163,192.

5. The unsecured debt is owed primarily (\$1,047,165.90, which is 90%) to insiders as follows: \$505,289.90 to the petitioning creditor American Capital Holdings, \$376,295.92 to the estate of David Panaia the former CEO, \$30,000 to Barney A. Richmond the current CEO, and \$135,583.05 to Richard Turner also a board member and currently the Treasurer.

6. In publications on the internet, Mr. Panaia, the deceased CEO, has been blamed for the company's problems. However, since the appointment of Mr. Richmond as the new CEO, there appears to have been no progress on the company's issues.

DEBTOR'S FINANCIAL TRANSACTIONS

7. A portion of funds loaned to the Debtor in June of 2005 were paid out in that month as fees to Kluger, Peretz in the amount of \$65,000. Since then funds have been paid out in small amounts for telephone, postage, financed insurance, etc., slowly depleting the Debtor's capital.

8. In July of 2005, Debtor accepted "financing" from American Capital Holdings for

reimbursement of an allowed payment of a pre-petition debt to former auditors Wieseneck, Andres & Co. of \$15,186.26.

9. Debtor made another payment to Weiseneck, Andres in October, 2005, of \$14,295.00, without a fee application having been filed, and without court order.

10. In fact, Weiseneck, Andres was not employed pursuant to court order until March 22, 2006 (C.P. #83). That employment was *nunc pro tunc* to the beginning of the case, but with no provision for the unauthorized payment to the auditors. This unauthorized payment was not discussed in the Debtor's Motion to Employ Weiseneck, Andres filed on February 21, 2006 (C.P. #56), nor its Motion for Reconsideration filed on March 3, 2006 (C.P. #63).

11. In March of 2006 Debtor began paying rent of \$2,617.52. There are insufficient funds at this time to cover the rent for April or May.

12. Debtor's cash balance at the end of March, 2006, was \$1,158.00.

13. The U.S. Trustee therefore states that there is a substantial and continuing loss to and diminution of the estate, as evidenced by the Debtor in Possession Reports, all filed in March, 2006.

PLAN OF REORGANIZATION

14. No plan and no disclosure statement have been filed in this case. Section 1106(a)(5) of the Code requires that a trustee shall, as soon as practicable, file a plan, or recommend conversion or dismissal of the case. The debtor-in-possession is required to perform this duty pursuant to Sec. 1107(a) of the Code. In the present case, the Debtor has failed to comply with Sec. 1106(a)(5).

15. Debtor's inactivity has caused an unreasonable delay which is prejudicial to creditors. Its auditors have actually been on board throughout the pendency of this case, although only recently employed by court order. They have even been paid. Debtor cannot be heard to say that it cannot

produce a plan because of a lack of accounting ability. Instead, the U.S. Trustee believes that there is a lack of financial ability.

16. There appears to be an absence of a reasonable likelihood of rehabilitation and no ability to effectuate a meaningful plan of reorganization, and therefore, pursuant to 11 U.S.C. Sections 1112(b)(1) and 1112(b)(4)(A) and (F), grounds exist to dismiss this chapter 11 case or to convert this case to a case under chapter 7.

17. The foregoing factors are indicative of the Debtor's inability to manage its affairs and effectively maneuver its way through the reorganization process.

WHEREFORE, the United States Trustee respectfully requests the entry of an order dismissing the above-captioned chapter 11 case and requiring the Debtor to pay U.S. Trustee fees to the U.S. Trustee within 10 days, or in the alternative, converting this chapter 11 case to a chapter 7 case, and for such other and further relief as may seem just and proper.

I, Denyse Heffner, hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida, and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

RESPECTFULLY SUBMITTED,
FELICIA S. TURNER
UNITED STATES TRUSTEE

Dated: May 3, 2006

By: /s/ Denyse Heffner
Denyse Heffner, FI Bar 0053351
OFFICE OF THE U.S. TRUSTEE
51 S.W. First Ave., Rm. 1204
Miami, FL 33130
(305) 536-7285

In re:

Case No.: 04-35435-BKC-SHF

ECOM ECOM.COM, INC.,

Debtor./

CERTIFICATION OF CONFERENCE

I HEREBY CERTIFY that pursuant to Local Rule 9073-1(D), I have contacted counsel for the debtor to attempt to resolve the issues herein.


(Signature below.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was telefaxed/mailed on the 3 day of May, 2006, to:

Michael D. Seese, Esq.
201 S. Biscayne Blvd. #1700
Miami, FL 33131
F305/379-3428

eCom eCom.com, Inc.
100 Village Square Crossing, Suite 202
Palm Beach Gardens, FL 33410

By: 
DENYSE HEFFNER
Attorney
Office of the U.S. Trustee
FL Bar# 0053351